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9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**
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12 MATTHEW ROBERTS, an individual,
13 and JOYCE ROBERTS, an individual,
14 Plaintiffs,

14 vs.

15 RESIDENTIAL CREDIT SOLUTIONS,
16 INC., a Delaware corporation;
17 PROSPECT MORTGAGE, LLC f/k/a
18 METROCITIES MORTGAGE LLC, a
19 Delaware corporation; GMAC
20 WHOLESALE MORTGAGE CORP.,
21 f/k/a GMAC MORTGAGE CORP., a
22 Delaware corporation; AMERICAN
HOME MORTGAGE SERVICING,
INC., a Delaware corporation;
MORTGAGE ELECTRONIC
REGISTRATION SERVICES, LLC, a
Delaware corporation; and T.D.
SERVICE COMPANY, an unknown
entity,

23 Defendants.
24

CASE NO. 10-CV-1203-H (JMA)

**ORDER DENYING MOTION
FOR TEMPORARY
RESTRAINING ORDER AND
INJUNCTIVE RELIEF**

25 On June 4, 2010, Plaintiffs Matthew and Joyce Roberts filed a complaint for rescission
26 and damages pursuant to the federal Truth in Lending Act, 15 U.S.C. § 1601 et seq., and for
27 unfair business practices under California Business and Professions Code § 17200 et seq.
28 (Doc. No. 1.) On July 7, 2010, Plaintiffs filed an *ex parte* request for temporary restraining

1 order and preliminary injunction, seeking to enjoin the sale of the secured property. (Doc. No.
2 4.)

3 Preliminary injunctions and Temporary Restraining Orders (“TROs”) are reserved for
4 emergency circumstances where the rights of a party are in urgent need of protection. Granny
5 Goose Foods, Inc. v. Bhd. of Teamsters, 415 U.S. 423, 438 (1974). Apart from showing the
6 necessity for immediate relief, applicants for a TRO must meet the same standards as for a
7 preliminary injunction. See, e.g., Hunt v. Nat’l Broad. Co., Inc., 872 F.2d 289, 292 (9th
8 Cir.1989). “A plaintiff seeking a preliminary injunction must establish that he is likely to
9 succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary
10 relief, that the balance of equities tips in his favor, and that an injunction is in the public
11 interest.” Winter v. Natural Res. Def. Council, Inc., 129 S. Ct. 365, 374 (2008); Marlyn
12 Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co., 571 F.3d 873, 877 (9th Cir. 2009).

13 In a rescission action under TILA, the party seeking rescission must restore to the
14 non-rescinding party all consideration received under the contract. See 15 U.S.C. § 1635(b);
15 Yamamoto v. Bank of New York, 329 F.3d 1167, 1172-73 (9th Cir. 2003). Here, Plaintiffs
16 have not tendered the loan proceeds, nor have they plausibly alleged that they are capable of
17 doing so. Plaintiffs concede that they fell behind on their mortgage payments and received a
18 notice of default in December 2009. (Doc. No. 4 at 3; Doc. No. 9-2, Notice of Default).
19 According to the Notice of Default recorded by Defendant American Home Mortgage
20 Servicing, Inc. on December 18, 2009 and sent to Plaintiffs on December 23, 2009 by
21 Defendant T.D. Service Company, Plaintiffs were behind on their loan payments in the amount
22 of \$92,529.13 as of December 24, 2009. (Id.) Plaintiffs filed this request for temporary
23 restraining order on July 7, 2010. Plaintiffs have not established that they are likely to succeed
24 on the merits of their TILA rescission claim. See Winter, 129 S. Ct. at 374. Accordingly, the
25 Court concludes that there are inadequate grounds for issuance of a temporary restraining
26 order.

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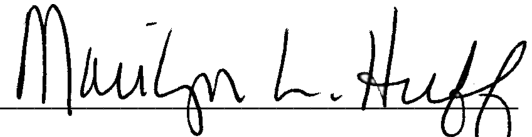
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Conclusion

For the reasons above, the Court DENIES Plaintiffs' motion for temporary restraining order and injunctive relief without prejudice.

IT IS SO ORDERED.

DATED: July 9, 2010


MARILYN L. HUFF, District Judge
UNITED STATES DISTRICT COURT

Copies to all parties;

Courtesy copy to Sasan Mirkarimi,

Attorney for Defendant Residential Credit Solutions, Inc.